

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ADAM SCOTT WALKER,

Plaintiff,

v.

Case No. 8:20-cv-2338-T-KKM-AAS

GEICO GENERAL INSURANCE
COMPANY,

Defendant.

_____ /

ORDER

Defendant Geico moves to dismiss Plaintiff Adam Walker's bad-faith claim (Count II). Walker never responded to Geico's motion, and the time to do so has now passed. *See* Local Rule 3.01(c).

Walker's complaint alleges that Geico is responsible for paying underinsured motorist benefits for an auto accident involving Walker (Count I). Walker further alleges that Geico failed to settle in good faith his benefits claim (Count II). Geico moves to dismiss Walker's bad-faith claim, arguing that Walker's bad-faith claim is premature because Geico has not been found liable under its underinsured motorist benefits policy. (Doc. 5).

"[A]n insured's underlying first-party action for insurance benefits against the insurer necessarily must be resolved favorably to the insured before the cause of action for bad faith in settlement negotiations can accrue." *Blanchard v. State Farm Mut. Auto.*

Ins. Co., 575 So. 2d 1289, 1291 (Fla. 1991). Without finding an insurer liable under a policy for underinsured motorist benefits, an insured has no bad-faith claim. *Id.*; *see also Bottini v. GEICO*, 859 F.3d 987, 993 (11th Cir. 2017).

Walker's bad-faith claim is premature because Geico has not been found liable under its underinsured motorist benefits policy. The proper course is for the Court to dismiss without prejudice the bad-faith claim subject to refiling if Geico is found liable under the underinsured motorist benefits policy. *See Romano v. Amer. Cas. Co. of Reading, Pa.*, 834 F.2d 968, 970 (11th Cir. 1987) (affirming dismissal of bad-faith claim as premature "without prejudice to refiling of the action if and when appropriate").

Accordingly, Geico's motion to dismiss Walker's bad-faith claim (Count II) is **GRANTED**. Count II is **DISMISSED** without prejudice.

ORDERED in Tampa, Florida, on March 5, 2021.



Kathryn Kimball Mizelle
United States District Judge